

113

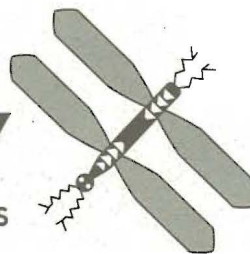
#2006-6

413303 DA7

Center for Tribal Water Advocacy

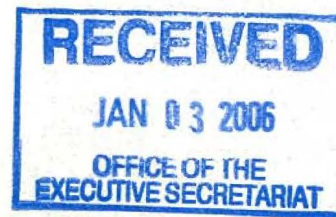
December 22, 2005

Water Law and Policy Services



CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mr. Stephen L. Johnson
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460



Mr. L. Michael Bogert
Regional Administrator
United States Environmental Protection Agency, Region 10
1200 6th Avenue (RA-140)
Seattle, WA 98101

RE: Notice of Intent to File Citizen Suit Under the Clean Water Act, 33 U.S.C. §
1313(c), for failure to Approve or Reject the OREGON WATER
QUALITY/FISH CONSUMPTION RULES

Dear Sirs,

This letter will constitute formal notice on behalf of the Center for Tribal Water Advocacy (CTWA) of its intent to file a citizen suit to correct the failure of the Environmental Protection Agency (EPA) to comply with the Clean Water Act (CWA) in connection with the May 20, 2004 decision by the Oregon Environmental Quality Commission (Commission) in Hermiston Oregon to adopt water quality criteria for toxic pollutants that do not adequately protect people who consume large amounts of fish. This is because the criteria are based on national fish consumption rates that are far below the amount of fish eaten by members of northwestern Indian tribes.

The federal Clean Water Act which requires states to periodically review and update water quality criteria based on the latest scientific information and to protect human health and the environment from toxics, and identify waters that do not meet criteria Water quality criteria are used for regulatory purposes in National Pollutant Discharge Elimination System point source permits, CWA Section 401 certification decisions, the CWA Section 303(d) impaired waters listing process, and development of total maximum daily loads.

How the Department applies water quality criteria will strongly affect the health of Oregonians. Specifically, DEQ should require modifications to wastewater discharge

permits and to certifications for dredge and fill activities and hydroelectric operations to comply with the revised criteria for toxic pollutants which would result in more water being listed as having impaired water quality. In addition, the revised criteria should alter the management practices required to control discharges from nonpoint sources, including those subject to TMDLs established for water quality limited waterbodies.

The 17.5 gram per day consumption rate adopted by the Commission is at the low end of a three-tiered recommendation by the DEQ's Technical Advisory Committee (TAC), which suggested that waters where fish are actively harvested by groups with high fish consumption (Native American and Asian) should be assigned the high intensity value (389 grams per day), waters where fish are harvested by sport fishers but not members of high fish consumption groups should be assigned the intermediate intensity (142.4 grams per day), and the remaining waters in which fishing is a beneficial use would be assigned the low intensity fish consumption value. The TAC also designate parts of the Columbia, Umpqua, Rogue, Willamette, Deschutes and Snake river basins as with high intensity fish consumption.

The Commission's decision was also based on the fact that the EPA's general public consumption rate of 17.5 grams is 2.7 times higher than Oregon's existing rate of 6.5 grams per day. This rate, however, is far less than EPA's national subsistence fisher consumption rate of 143.4 grams per day.

In fact, studies conducted by the EPA and the Columbia River Inter-Tribal Fish Commission in 1994 and 2002 suggest that subsistence and non-subsistence consumers ingest 63.2 grams per day. Those studies determined that Northwest tribal members eat six to 11 times more fish than the national average. The study also showed that the risk of developing cancer from eating contaminated salmon ranges from 7 in 10,000 to 2 in 1,000, depending on where the fish was caught, the size of the person and how much fish they eat. According to the report, Tribal members who eat resident fish, are at an even higher risk of developing cancer. For some locations where sturgeon and mountain whitefish are eaten in large quantities, the risk of developing cancer is as high as 2 in 100.

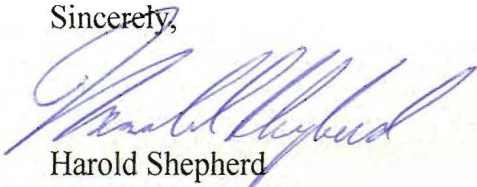
Fish consumption levels of 540 grams per day should be used as the basis for establishing as for establishing water quality criteria. In establishing the toxics criteria, the Commission made a willful decision to deny adequate protection to subsistence groups, minority populations and tribal people. It denies them the protection of harvesting healthy fish from their waters. This is in total disregard of the of the valuable CRITFC studies, which DEQ clearly chose to ignore and EPA environmental justice guidelines.

Although tribal subsistence fishers will not be protected by this rule, the EPA as endorsed the new toxic standards rule and concluded that the rule is in compliance with the CWA under 33 U.S.C. 1313. By adopting the Oregon State water quality criteria for

toxic pollutants, however, EPA is in violation of the CWA. These are serious violations that undermine the integrity of the CWA and EPA's obligation to protect water resources and uphold federal law. If they remain uncorrected, CTWA intends to file suit to enforce the requirements of the CWA, following expiration of the statutory 60-day notice period.

If you have any questions regarding this notice please do not hesitate to contact us.

Sincerely,



Harold Shepherd
Staff Attorney

Cc: Stephanie Hallock, Director
Oregon Department of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204

Alberto Gonzales, Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001